



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

May 14, 1996

Ms. Esther Hajdar
Assistant General Counsel
Texas Department of Agriculture
P.O. Box 12847
Austin, Texas 78711

OR96-0703

Dear Ms. Hajdar:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 39745.

The Texas Department of Agriculture (the "department") received two requests for information seeking "a copy of narrative and any other records submitted by Eugene Hines pertaining to TDA incident 03-95-0026." You have submitted for our review Dr. Ambrose K Charles' complete report and several medical records. We assume that these documents were submitted to the department by Mr. Hines and are responsive to the request for information. You state that the department has forwarded a redacted copy of Dr. Charles' memorandum report to the requestors. You claim that the redacted portions of the memorandum and the remaining documents in full are excepted from required public disclosure by section 552.101 of the Government Code.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." You assert that article 4495b of Texas Civil Statutes (the "Medical Practice Act") protects the redacted report and medical records information from disclosure. Section 5.08 of the Medical Practice Act provides, in part:

- (a) Communications *between one licensed to practice medicine*, relative to or in connection with any professional services as a physician to a patient, is confidential and privileged and may not be disclosed except as provided in this section.
- (b) Records of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are *created or maintained by a physician* are

confidential and privileged and may not be disclosed except as provided in this section. [Emphasis added].

Information generated by a physician is excepted from disclosure by section 552.101 of the Government Code as information deemed confidential by statute, specifically section 5.08 of the Medical Practice Act. Attorney General Opinion MW-381 (1981). However, when an employee gives his medical history to his employer, the medical history is not generated by a physician and is, therefore, not covered by section 5.08. Open Records Decision No. 316 (1982). Similarly, because it appears that the complainant in this case provided some of the medical information to the investigators, the information is not confidential under section 5.08. We assume that Dr. Charles is not licensed to practice medicine. We have marked those portions of Dr. Charles' report which appear to have been provided to the investigator by the complainant.

Although medical information provided by the complainant is not protected by section 5.08, we must consider whether it is excepted from disclosure under section 552.101 by the doctrine of common-law privacy. Information may be withheld on the basis of common-law privacy if it is highly intimate or embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities, and there is no legitimate public interest in its disclosure. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977); Open Records Decision Nos. 562 (1990) at 9, 561 (1990) at 5, 554 (1990) at 3. The medical information contained in Dr. Charles' report is not the type of information generally considered highly intimate or embarrassing. *See, e.g.*, Open Records Decision No. 343 (1982) at 1-2. Consequently, any medical information that the complainant gave to the investigator must be released.

We now address whether the remaining information submitted for our review may be withheld.

Section 5.08(c) of the Medical Practice Act provides as follows:

(c) Any person who receives information from confidential communications or records as described in this section other than the persons listed in Subsection (h) of this section who are acting on the patient's behalf may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

Section 5.08(c) protects medical information in the hands of one who receives it or summarizes it from a physician's confidential communications or records. *See, e.g.*, Open Records Decision No. 507 (1988) at 3. The remaining, unmarked portions of the redacted memo report and the remaining documents in full include medical records, access to which is governed by provisions outside the Open Records Act. Open Records Decision No. 598 (1991). The Medical Practice Act provides for both confidentiality of medical

records and certain statutory access requirements. *Id.* at 2. Thus, this remaining information may only be released as provided by the Medical Practice Act.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,

A handwritten signature in black ink that reads "Don Ballard". The signature is written in a cursive, flowing style.

Don Ballard
Assistant Attorney General
Open Records Division

JDB/ch

Ref.: ID# 39745

Enclosures: Marked documents

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